IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.743 of 2000

Reserved on 28.11.2000

Date of decision 7.12.2007

State of H.P. Appellant

Versus

Gopal Singh and others Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr.M.A.Khan, Deputy Advocate General.

For the respondent: Mr.N.K.Thakur, Advocate.

Rajiv Sharma,J.

The respondents were accused in Police Challan No.23-II/98(288-I/97) and they were prosecuted under Sections 451. 504, 506 and 323 read with Section 34 of the Indian Penal Code in the court of Additional Chief Judicial Magistrate, Sarkaghat, District Mandi and were acquitted on 14.12.1999. The State has filed the present appeal against the acquittal of the respondents.

The facts in nutshell are that on 1.7.1997 at about 9 p.m. the complainant was present in the upper storey of her house with family members situated at Village Tarun, Illaqa Kamlah, Tehsil Sarkaghat, District Mandi. Accused No.2 Smt..Parwati Devi after consuming liquor started hurling abuses to the complainant. According to the prosecution the accused persons got furious when they were requested to maintain decency. They trespassed into the house of the complainant and gave beating to the complainant as well as to her husband. The matter was reported to the Police Station Sarkaghat on 2.7.1997. The F.I.R. was

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[1] Whether reporter of local papers is allowed to see the judgment? No.

registered and the investigation was carried on. The site plan of the spot was prepared and the statements of the witnesses were recorded. After the completion of the investigation the police report was forwarded for favour of trial for commission of offence mentioned here in above. The charges were framed against the accused persons for the commission of offence punishable under Sections 451,323, 506/34 of the IPC to which accused persons pleaded not guilty and claimed trial.

The prosecution had examined as many as seven witnesses in all and closed the evidence. The accused persons did not lead any evidence in their defence. The accused were examined under Section 313 Cr.P.C. The trial court acquitted the accused on 14.12.1999, hence this appeal by the State.

Mr.M.A.Khan, learned Deputy Advocate General had strenuously argued that the prosecution has proved the charge against the accused. He then contended that the trial court has not correctly appreciated the evidence led by the prosecution which has resulted in grave miscarriage of justice. Mr.N.K.Thakur, learned counsel appearing for the respondents had supported the judgment of the trial court dated 14.12.1999.

I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

Initially at the time of registration of the FIR the complainant had impleaded four persons in the commission of offence i.e. three accused and one Sh.Rup Lal son of Sh.Lalman, but the police on completion of investigation had not arrayed Rup Lal as co-accused in the present case. The names of witnesses i.e. PW-3 Wabhur Singh, PW-4 Ranjit were not mentioned as eye witnesses in the FIR, whereas the prosecution has claimed that both of them have seen the occurrence. If they had seen the occurrence of 1.7.1997 their names should have been mentioned in the FIR. PW-1 Sheela Devi had testified that she and her husband were subjected to beatings but they were not medically examined by the police. Complainant, Sheela Devi had not deposed in her statement that accused

persons had threatened her and her husband. She has not made any deposition in her statement that accused persons had held out threats to her life as such the charge of criminal intimidation is not made out against the accused persons. It has come in her cross-examination that the father of respondent No.1 had worked with them and suggestion was put on behalf of the accused that the complainant had not made payment of the wages to the father of the accused. Therefore it can be presumed that when the wages were asked for by the father of the accused No.1 the possibility of fastening a false case against the accused persons cannot be ruled out. She had also admitted that she had a quarrel with accused persons about two years back. It is thus evident that the parties are inimical towards each other and are not having cordial relations. PW-3 Wabhur Singh had only stated that he had seen the parties fighting with each other. He had further admitted that Bahadur Singh happens to be his nephew. PW-4 Ranjit Singh is also real brother of the husband of the complainant Sheela Devi. The statements of these two eye witnesses i.e. PW-3 Wabhur Singh and PW-4 Ranjit Singh cannot be relied upon being relatives of the complainant party. Their names also did not figure in the FIR. PW-5 Chhanju Ram has denied even the occurrence. He was declared hostile.

The prosecution has failed to prove that the complainant and her husband were given beatings and she was criminally intimidated. Consequently, the prosecution has failed to prove its case against the accused persons. There is neither any misreading nor mis-appreciation of the evidence led before the trial court. The judgment passed by the trial court calls for no interference. The appeal is accordingly dismissed. The bonds furnished by the respondents are discharged.

December 7,2007(g) **(Rajiv Sharma), J.**